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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RYUJI ISHIGURO, ITARU KAWAKAMI,
MITSURU TANABE, YUICHI EZURA,
ICHIRO SATO and MUNETAKE EBIHARA

Appeal 2007-1698
Application 09/869,164
Technology Center 2100

Oral Hearing Held: October 24, 2007

Before ALLEN R. MacDONALD, JAY P. LUCAS, and
ST. JOHN COURTENAY, III, *Administrative Patent Judges*.

ON BEHALF OF THE APPELLANTS:

JOSEPH E. WRKICH, ESQUIRE
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The above-entitled matter came on for hearing on Wednesday,
October 24, 2007, commencing at 1:00 p.m., at the U.S. Patent and
Trademark Office, 600 Dulany Street, Alexandria, Virginia, before
Dawn A. Brown, Notary Registration No. 7066896, Notary Public.

1 P R O C E E D I N G S

2 THE USHER: Calendar Number 27, Appeal 2007-1698. Counsel is
3Mr. Joseph Wrkich.

4 JUDGE MacDONALD: Let me make sure we have the right spelling
5for the reporter. W-R-K-I-C-H?

6 MR. WRKICH: That is correct.

7 JUDGE MacDONALD: Thank you. Have you been here before?

8 MR. WRKICH: No, I have not.

9 JUDGE MacDONALD: The way it works is you have 20 minutes by
10that clock when you start, and begin whenever you're ready.

11 MR. WRKICH: Thank you.

12 JUDGE MacDONALD: If we ask you questions, we'll give you a
13little bit more time.

14 MR. WRKICH: Okay. An overview of the invention discussed in the
15specification involves distribution of content data. An example of content
16data would be a music file. An appendage to that music file or content data
17is usage condition information. What this is -- this information places limits
18on the use of the content data.

19 If you look at specifically Claim 26 which was discussed in the appeal
20brief as representative of the issues pending before us, the invention includes
21a converter to convert the first format of usage-condition information into a
22second format, the second format being different from the first format.

23 Why this is being done is that in the context of content distribution,
24there are many providers of content data. Each of those content providers
25have a different format for usage-condition information.

1 So rather than manage the plurality of these different formats, the
2present invention converts all those formats into a common format.

3 And the pending claims were rejected as being anticipated by Benson.
4Benson discusses three elements: a data package, which includes a data
5object and control data; a data object with the analogy to our claimed-
6content data; and the controlled-data defined uses of the data object.

7 In Benson, it is the data object that has its format converted and not
8the control data. In the examiner's answer, he actually flip-flopped between
9data package and data object, but if you look at Figure 4 of Benson, in the
10flow process, Step 408, needs data conversion and Step 409 is converts the
11data object file format. It is not converting the control data.

12 JUDGE LUCAS: Mr. Wrkich, give me examples, if you would, of
13what you consider different types of formats for the content, which is the
14data object, and also give me examples, if you would, of what you consider
15different formats for the usage data, meaning the using-condition
16information.

17 MR. WRKICH: The formats of the content data would be MP3 files,
18WMP players, Windows Media Players; things that play its musical content.
19The formats of the usage data could be those files as well or other types of
20data files, like .dat file or some relatively known computer format that would
21be appended to that.

22 JUDGE LUCAS: I'm trying to think of how -- what you would
23convert the format of the usage data from; converting something, to
24something, because usage data doesn't seem to be as well known or as well-
25established types of formats as the MP3 or WMP or AEI-type formats that

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1are for the content. So you said for the usage data, it would be a text file or
2.dat file?

3 MR. WRKICH: Text or .dat file or, basically, any file that a
4distributor would have in mind there is a system to process that particular
5file. Mostly, it is a choice by the content distributor of what file format their
6equipment is going to process.

7 JUDGE LUCAS: All right. Please continue.

8 MR. WRKICH: I also want to highlight Figure 17 of Benson which
9actually discloses the data package. And as you can see there, the data
10package includes the control data and the object data together.

11 Actually, if you go through the process as outlined in the reply, the
12control data has its format actually converted before that data package is
13assembled. The control data is not part of the conversion process at all. The
14object data is converted, control data has been appended to create the data
15package.

16 I think I've highlighted the issues pending in this file. If there are no
17further questions, I will yield the remainder of my time.

18 JUDGE COURTENAY: The usage data, as you claimed, is just
19digital rights management; is that correct?

20 MR. WRKICH: Yes. An example in the specifications is the number
21of reproductions. If you acquire this data content along with the usage
22information, maybe you are only allowed to reuse that three times as part of
23the license between the end user and the distributor of the content.

24 JUDGE LUCAS: Can you give us a bit of a context? Obvious, Sony
25has some device in mind. The specification was not, perhaps, written in the

1clearest of conventional English language, and I would like to have your
2concept of what the totality of the invention disclosed is.

3 MR. WRKICH: I think I understand to the extent that I can describe
4this in general concepts. I can't go into specific plans with Sony products.

5 I think Figure 1 is an overview of the system. In that system, there is
6a remote server that stores the content, and there is a Personal Computer 1
7that will actually download the content and manage the usage information.

8 Then there are a variety of sub-devices, maybe MP3 players or other
9type devices, that you actually check out the content from that PC computer
10to that personal device, so the user can take that with them.

11 JUDGE LUCAS: I didn't understand -- I was having trouble
12understanding whether the ultimate user, that is Harry Homeowner, was the
13one that was going to be owning and controlling the PC from which the
14various devices would be appended or whether the PC was going to be
15owned by some distribution company, which would then rent out the
16individual handheld devices.

17 MR. WRKICH: It is my understanding that the specification is
18written from the context that the end user would be controlling the PC, but I
19don't think there is anything in the specification that precludes having an
20intermediary own that PC then rent out those personal devices.

21 JUDGE LUCAS: I see. Okay. That was just for background.

22 What happens to the temporary package in the event there are two
23types of data: The header data, which includes the content plus some
24information about how the format is about to be changed, plus the usage
25rights data. So there are two separate files.

1 And they mention in Benson that the files are consolidated into some
2sort of temporary file. I'm looking at Column 8 of Benson near the top.

3 MR. WRKICH: Your question is what happens to the temporary file?

4 JUDGE LUCAS: Right.

5 MR. WRKICH: I think that is explained in Figure 4, Step 414
6through 415 and through 416. Temporary file is saved, then encrypted. And
7it is saved as a single file. I think the temporary file is just there as a
8description of that data as part of that intermediary process.

9 JUDGE COURTENAY: You don't agree that encryption is a form of
10conversion? When you encrypt something, don't you format it from a first to
11second format?

12 MR. WRKICH: This was addressed in the initial appeal brief and
13from the specification, we discussed both the encryption and the data format
14conversion that we're claiming to the extent that the specification discloses
15that they're different. We'll rest on that.

16 JUDGE COURTENAY: We're dealing with the scope of the claims
17here, not the specification.

18 MR. WRKICH: The specification is still going to be interpreted in
19light of the claims and the claims cannot be construed so broadly that it
20leaves contrary instruction that a person of ordinary skill in the art would
21reach.

22 JUDGE MacDONALD: Let me raise an issue that is probably meager
23with respect to Claim 1. I've looked at it a couple of times, and I have a
24concern that what I see here is means for receiving, means for converting,
25and means for transmitting.

1 And the receiving function is not going to change based on the
2information that is being received, and it is only one type of information
3being received, so you don't have the content data flowing through these
4steps.

5 Then it is converted from a first format to a second format, which, to
6me, doesn't seem to be really relevant to the information that is being used,
7and then it is going to be transmitted. I'm a little -- I don't see how the
8using-condition information is going to be anything more than nonfunctional
9descriptive material in this situation.

10 Really, what we have is means for receiving some kind of
11information, means for converting it from a first format to a second format,
12and means for transmitting it.

13 I know the examiner didn't raise this issue, but it appears that there is
14an attempt here to distinguish this claim solely based on the data content.
15These appear to be conventional functions that are occurring.

16 MR. WRKICH: Since this issue was not raised earlier, I'm not
17prepared to fully discuss that issue. If it needs to be further explored, maybe
18we open prosecution and it can be taken up at that time.

19 JUDGE MacDONALD: Wise answer not to go further. Okay.

20 Any further questions?

21 Thank you very much.

22 MR. WRKICH: Thank you.

23 (Whereupon, the proceedings at 1:13 p.m. were concluded.)

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